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8 Attorneys for Plaintiff and Counterdefendant,
9 AT&T CORP.

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

13 AT&T CORP.,

14 Plaintiff,

15 v.

16 DATAWAY INC. dba DATAWAY
17 DESIGNS,

18 Defendants.

Case No. C07-02440 EDL

NOTICE OF MOTION AND MOTION
OF PLAINTIFF AND COUNTER-
DEFENDANT AT&T CORP. FOR
ORDER AWARDING REASONABLE
ATTORNEY'S FEES AND OTHER
RELATED NONTAXABLE EXPENSES
AS ITEMS OF COSTS OF SUIT;
MEMORANDUM OF POINTS AND
AUTHORITIES; REQUEST FOR
JUDICIAL NOTICE; DECLARATION
OF TIMOTHY CARL AIRES

[F.R.C.P., Rule 54(d)]

DATE: September 23, 2008
TIME: 9:00 a.m.
CTRM: E, 15th Floor

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22 PLEASE TAKE NOTICE that at 9:00 a.m. on September 23, 2008 in Courtroom E,
23 15th Floor of this Court, located at 450 Golden Gate Avenue, San Francisco, California
24 94102, the motion of Plaintiff and Counterdefendant AT&T Corp. for order awarding
25 Plaintiff and Counterdefendant AT&T Corp. attorney's fees (\$87,400.00) and other
26 nontaxable related expenses (\$2,062.40) totaling \$89,462.40 as items of costs of suit, will
27 be brought on for hearing.

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1 The motion is made pursuant to Federal Rules of Civil Procedure, Rules 54(d) on the
2 grounds that: (1) Judgment having been entered in its favor, AT&T Corp. is the party
3 prevailing in this action; (2) A party prevailing in an action involving a contract which
4 includes a valid agreement for an attorney's fee award is entitled to recover reasonable
5 attorney's fees as an item of costs of suit; (3) A filed tariff binds both the carrier and the
6 customer with the force of law; (4) AT&T Tariff F.C.C. No. 30, Section 3.5.14 provides as
7 follows: "In the event that the Company incurs fees or expenses, including attorney's fees,
8 in collecting or attempting to collect any charges owed to the Company, the customer will
9 be liable to the Company for the payment of all such fees and expenses reasonably incurred.";
10 (5) The reasonable value of the attorney's fees incurred in this action by AT&T Corp. is
11 \$87,400.00; and (6) Related nontaxable expenses totaling \$2,062.40 have been incurred.

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13 The motion is based on this notice of motion, the memorandum of points and
14 authorities in support thereof, the accompanying request for judicial notice, the
15 accompanying declaration of Timothy Carl Aires, and upon such oral argument as may be
16 presented at the hearing of this motion.

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18 DATED: August 19, 2008

AIRES LAW FIRM

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20 By: 

21 Timothy Carl Aires, Esq.
22 Attorney for Plaintiff and Counterdefendant,
23 AT&T CORP.
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